



## PREVENTIVE LAW SERIES

# FOREIGN ADOPTION



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Inter-country adoptions must comply with: (1) the adoption laws of the foreign country where the child is, (2) the immigration and naturalization laws of the United States which allow the child to enter the United States, and (3) the adoption laws of the state in the United States where the adopted child will live when he/she is in this country. This handout is a general overview of an intercountry adoption of a child who is NOT a stepchild. The immigration and naturalization laws that apply to stepchild situations are different from the laws that apply to non-stepchild situations.

### IMMIGRATION LAWS AND ADOPTIONS OF FOREIGN CHILDREN

The Immigration and Nationality Act (INA) allows for the immigration of two categories of adopted children: orphans and non-orphans.

- **Orphans:** Not all children adopted abroad qualify as orphans. There is a specific legal definition of orphan under immigration law. A foreign child may be considered an orphan if he or she:
  1. does not have any parents because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents; OR
  2. has a sole or surviving parent who is unable to care for the child, consistent with the local standards of the foreign sending country, and who has, in writing, irrevocably released the child for emigration and adoption

An orphan petition must be filed before the child's 16th birthday. If the child is a natural sibling of an orphan or adopted child and is adopted with or after that child by the same adoptive parents, an orphan petition may be filed before the child's 18th birthday. The petitioner (the person applying for the adoption) must personally see the child prior to or during the adoption proceedings or submit a letter of intent to readopt, as discussed below.

**The child cannot be living in a two-parent family situation and still be considered an orphan.**

- **Non-orphans:** A non-orphan adopted child is a child under the age of 16 will be adopted under the laws of the country where the child currently lives. The child must have resided with, and been in the legal custody of the adopting parents for AT LEAST TWO YEARS prior to the filing of the immigrant visa petition.

**At least one of the prospective adoptive petitioners must be a U.S. citizen.** The requirements and procedures for adoption of non-orphans are different than for orphans.

### PROCEDURE

Before the adopting parents identify a foreign-born child to adopt they should file **USCIS Form I-600A** (APPLICATION FOR ADVANCE PROCESSING OF ORPHAN PETITION) with the United States Customs and Immigration Service (USCIS). This form states that the family is considering an intercountry adoption and allows USCIS to first process the application that relates to the family's ability to provide a proper home environment and their suitability as parents. Then, once a child who meets the INA's definition of orphan is identified, the adopting parents must file **USCIS Form I-600** (PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE RELATIVE) on behalf of the child. The fees to

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file these petitions are \$720.00 plus \$85.00 (as of August 2015) for each adult household member who must be fingerprinted.

If the foreign child qualifies for an immigrant visa and the correct paperwork is filed and approved, the child will be allowed to enter the United States. Upon entering the United States, the child will be given a resident alien registration card. There are two classifications of visas for foreign children:

1. IR-3 Visa – this type of visa recognizes that a child has been legally adopted in the foreign country. Once the child is in the United States on the IR-3 visa and has their alien registration card, the naturalization process can be continued.
2. IR-4 Visa – this type of visa recognizes ONLY a guardianship that the adopting parents have over the foreign child. If an IR-4 Visa is granted, the child will have to be legally adopted according to the laws of the state in which the adoptive family lives upon returning to the United States. This visa is granted when the parents do not see the orphan and will be readopting the child in their home state.

### **RE-ADOPTION**

Re-adoption is simply the process of completing another adoption in the United States where the child will be living after the child was legally adopted in the foreign country. Before filing for naturalization, the adopting family should readopt the child according to the laws of the state that the child will be living in, even if that child was legally adopted in the foreign country. Some states do not recognize a foreign adoption, so you should check to see if your state does or does not recognize a foreign adoption. Readoption in California is not mandatory but highly recommended.

### **COSTS AND LENGTH OF TIME FOR THE INTERCOUNTRY ADOPTION PROCESS:**

In general, the total costs averages from \$16,000-\$20,000 for all services rendered in the United States and the foreign country. It usually takes an average of one year for an intercountry adoption to be completed. If you are considering an intercountry adoption, there are licensed agencies or facilitators in the United States that specialize in the intercountry adoption process.

### **NAVY ADOPTION EXPENSE REIMBURSEMENT PROGRAM**

Active-duty members of the armed forces whose adoption of a child under the age of 18 is finalized on or after December 5, 1991, may be reimbursed up to a maximum of \$2,000 per child for “qualifying expenses” related to the adoption. For multiple adoptions, the maximum reimbursable amount is \$5,000 per year. If both parents are active-duty service members, only one parent may be reimbursed. Claims will not be paid until the adoption is final. You must have receipts or documentation for all of the qualifying adoption expenses in order to be reimbursed. STEPCHILDREN ADOPTIONS DO NOT QUALIFY FOR THE NAVY ADOPTION EXPENSE REIMBURSEMENT PROGRAM. Contact your command for more information.

### **LEGAL ASSISTANCE SERVICES**

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

### **RESOURCES**

**Department of State:** (888) 407-4747; [travel.state.gov/family/adoption/adoption\\_485.html](http://travel.state.gov/family/adoption/adoption_485.html)

#### **U.S. Citizenship and Immigration Services**

- Intercountry Adoption: [www.uscis.gov/graphics/services/index2.htm](http://www.uscis.gov/graphics/services/index2.htm)
- Bringing a Foreign-Born Orphan to the United States: [www.uscis.gov/graphics/howdoi/fororphan.htm](http://www.uscis.gov/graphics/howdoi/fororphan.htm)

**National Adoption Information Clearinghouse:** (888) 251-0075; [naic.acf.hhs.gov](http://naic.acf.hhs.gov); [naic@calib.com](mailto:naic@calib.com)

Immigration and Nationality Act §101, 10 U.S.C § 1052 (2012)

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